

## HOUSE BILL NO. 590

INTRODUCED BY F. WILMER

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A DOMESTIC PARTNER REGISTRY; PROVIDING A PROCEDURE FOR ESTABLISHING, RECORDING, AND TERMINATING DOMESTIC PARTNERSHIPS; PROVIDING FOR THE EFFECTS OF A DOMESTIC PARTNERSHIP; AND AMENDING SECTION 40-1-401, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Definitions.** As used in [sections 1 through 8], unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Domestic partner" means one of two unmarried adults who have entered into long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare.

(3) "Domestic partnership" means the legally recognized union of two eligible individuals established pursuant to [sections 1 through 8].

(4) "Domestic partnership declaration" means a document that certifies that the persons named on the document have established a domestic partnership in this state in compliance with [sections 1 through 8].

**NEW SECTION. Section 2. Requisites for valid domestic partnership -- forms.** (1) For a domestic partnership to be established in Montana, the persons:

(a) may not be parties to another domestic partnership, civil union, or marriage in this state;

(b) must be at least 18 years of age; and

(c) shall freely consent. The consent of either party to the domestic partnership may not be obtained by force, duress, or fraud.

(2) The department shall make domestic partnership declaration forms and domestic partnership termination forms available to each clerk of the district court. The clerk shall provide the forms to individuals without charge.

1        **NEW SECTION. Section 3. Establishment of domestic partnership.** A domestic partnership may be  
2 entered into by completing the domestic partnership declaration form described in [section 7], signing the  
3 declaration form before a notary public, and completing the registration requirements in [section 6].

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5        **NEW SECTION. Section 4. Contracts -- evidence.** (1) All contracts made between persons in  
6 contemplation of a domestic partnership remain in full force and effect after the domestic partnership is registered.

7        (2) A certified copy of the declaration of a domestic partnership received from the department is  
8 presumptive evidence of the domestic partnership in all courts.

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10       **NEW SECTION. Section 5. Legal benefits of domestic partnership.** The following is a list of legal  
11 benefits, protections, and responsibilities that apply to parties to a domestic partnership:

12        (1) laws relating to title, tenure, descent and distribution, intestate succession, waiver of will, survivorship,  
13 or other incidents of the acquisition, ownership, or transfer, inter vivos or at death, of real or personal property,  
14 including eligibility to hold real and personal property as tenants by the entirety. The parties to a domestic  
15 partnership are determined to meet the common law unity of person qualification for purposes of a tenancy by  
16 the entirety.

17        (2) causes of action, including an action for wrongful death, emotional distress, or loss of consortium;

18        (3) probate law and procedure, including nonprobate transfers;

19        (4) group insurance for public employees under Title 2, chapter 18, parts 7 and 8;

20        (5) domestic violence and partner or family member assault programs;

21        (6) victim's compensation rights;

22        (7) workers' compensation benefits;

23        (8) laws relating to emergency and nonemergency medical care and treatment, hospital visitation, and  
24 notification, including the rights of a resident of a long-term care facility under 50-5-1104;

25        (9) terminal care documents under Title 50, chapter 9, and durable power of attorney for health care  
26 execution and revocation under 72-31-222;

27        (10) parental leave benefits under 2-18-606;

28        (11) laws relating to taxes imposed by the state or a local government;

29        (12) laws relating to immunity from compelled testimony and the communication privilege under 26-1-802;

30        (13) the rights of a surviving spouse under Title 72, chapter 2;

- 1 (14) laws relating to making, revoking, and objecting to anatomical gifts by others under 72-17-214; and  
2 (15) legal requirements for assignment of wages under 31-1-306.

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4 **NEW SECTION. Section 6. Registration of domestic partnership.** To become registered domestic  
5 partners, domestic partners shall jointly file with the department a notarized domestic partnership declaration form  
6 accompanied by the required filing fee and a fee for returning certified copies to the domestic partners. The  
7 department shall file the declaration form in the domestic partner registry established pursuant to [section 7] and  
8 return two certified copies of the declaration to the domestic partners at the address provided. The department  
9 shall charge a fee for registration that is adequate to pay the projected costs for managing the registry. The fee  
10 for certified copies must be commensurate with the costs of making the certified copies and mailing the certified  
11 copies. The fees must be adopted by rule.

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13 **NEW SECTION. Section 7. Department duties -- forms -- registry.** (1) The department shall develop  
14 standard forms for the declaration and termination of registered domestic partnerships.

15 (2) (a) The domestic partnership declaration form must adequately identify each individual signing the  
16 form by name, including former names, by residence, and by date and place of birth.

17 (b) The declaration form must contain an assertion under oath that each individual meets the  
18 requirements of [section 2] at the time the declaration is filed.

19 (c) The declaration form must contain a warning that registration may affect property and inheritance  
20 rights, that registration is not a substitute for a will, a deed, or a partnership agreement, and that any rights  
21 conferred by registration may be completely superseded by a will, a deed, or other instruments that may be  
22 executed by either party. The declaration form must also contain instructions on how the domestic partnership  
23 may be terminated.

24 (3) The domestic partnership declaration form must include information providing that a domestic  
25 partnership may not be entered into when either party to the intended domestic partnership:

- 26 (a) is under 18 years of age;  
27 (b) lacks the capacity to consent because of mental incapacity or infirmity; or  
28 (c) is under a guardianship unless there is written consent from the guardian.  
29 (4) The department shall keep a registry of all domestic partnerships.

1        **NEW SECTION.** **Section 8. Termination of domestic partnership.** (1) A registered domestic  
2        partnership is terminated by the marriage of either registered domestic partner or by the filing with the registry  
3        of a notice under oath:

4                (a) signed by both domestic partners before a notary public stating that the domestic partners consent  
5        to the termination; or

6                (b) from either domestic partner that the other domestic partner was personally served with a notice of  
7        intent to terminate the domestic partnership. If personal service is not feasible, then substitute service may be  
8        accomplished in the same manner as provided by the Montana Rules of Civil Procedure for commencement of  
9        a civil action. Termination under this subsection (1) is not effective until 60 days after service is complete.

10               (2) A copy of the termination must be filed with the department in order to update the registry provided  
11        for in [section 6].  
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13        **Section 9.** Section 40-1-401, MCA, is amended to read:

14        **"40-1-401. Prohibited marriages -- contracts.** (1) The following marriages are prohibited:

15               (a) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

16               (b) a marriage between an ancestor and a descendant or between a brother and a sister, whether the  
17        relationship is by the half or the whole blood, or between first cousins;

18               (c) a marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship  
19        is by the half or the whole blood;

20               (d) a marriage between persons of the same sex.

21               (2) Parties to a marriage prohibited under this section who cohabit after removal of the impediment are  
22        lawfully married as of the date of the removal of the impediment.

23               (3) Children born of a prohibited marriage are legitimate.

24               (4) ~~(a) A~~ Except as provided in subsection (4)(b), a contractual relationship entered into for the purpose  
25        of achieving a civil relationship that is prohibited under subsection (1) is void as against public policy.

26               (b) A contractual relationship may be entered into for the purpose of achieving a domestic partnership  
27        in accordance with [sections 1 through 8]."  
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29        **NEW SECTION.** **Section 10. Codification instruction.** [Sections 1 through 8] are intended to be  
30        codified as an integral part of Title 40, and the provisions of Title 40 apply to [sections 1 through 8].  
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